

United States Postal Service and National Association of Letter Carriers, Branch 1037, AFL-CIO.
Cases 16-CA-21217, 16-CA-21281, 16-CA-21421, and 16-CA-21581

June 30, 2003

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS WALSH
AND ACOSTA

On July 25, 2002, Administrative Law Judge Lawrence W. Cullen issued the attached decision. The General Counsel filed an exception and supporting brief, which is limited to the judge's proposed remedy regarding backpay calculations. The Respondent filed cross-exceptions to the judge's decision, and the General Counsel filed an answering brief to the Respondent's cross-exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and record in light of the exceptions and briefs¹ and has decided to affirm the judge's rulings, findings,² and conclusions³

¹ The General Counsel has filed a motion to strike the cross-exceptions. He contends that (1) the Respondent fails to identify the part of the judge's decision to which exception is taken and fails to support the exceptions by precise citation of transcript pages, in accordance with Sec. 102.46(b)(1)(i), (ii), and (iii) of the Board's Rules and Regulations, and (2) the Respondent's argument in support of its cross-exceptions does not contain a "clear and concise" statement of the case and does not specifically address each exception, as required by Sec. 102.46(c)(1), (2), and (3) of the Board's Rules and Regulations. Although the Respondent's cross-exceptions are not in conformity with the aforementioned Rules and Regulations, we find that they are not so deficient as to warrant striking. Furthermore, it does not appear that the General Counsel has been substantially prejudiced by the Respondent's failure to comply with these Rules and Regulations in light of the fact that he has filed an answering brief addressing the issues sought to be raised by the cross-exceptions. Accordingly, we deny the General Counsel's motion.

² The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

In the absence of exceptions, we adopt the judge's findings that the Respondent violated Sec. 8(a)(5) and (1) of the Act by failing to deal with designated Union Representative James Latham, and by failing to bargain over overtime by failing to follow through with its equitable overtime grievance settlement with the Union.

³ Because the Respondent failed to comply with a subpoena, the judge struck all of the Respondent's defenses. The Board has adopted this conclusion. In light of that, Chairman Battista does not pass on whether any of the defenses would have been valid.

and to adopt the recommended Order as modified and set forth in full below.⁴

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified and set forth in full below and orders that the Respondent, the United States Postal Service, Amarillo, Texas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to bargain with the National Association of Letter Carriers, Branch 1037, AFL-CIO (the Union) by failing to provide it with requested information that is relevant and necessary to its role as the exclusive bargaining representative for the following bargaining unit:

Included: All full-time and regular part-time city letter carriers.

Excluded: All other employees, including managerial personnel, professional employees, employees engaged in personnel work in other than a purely non-confidential clerical capacity, postal inspection employees, casual employees, rural letter carriers, mail handlers, maintenance employees, special delivery messengers, motor vehicle employees, postal clerks, security guards, and supervisors as defined in the Act.

(b) Failing to timely provide requested information to the Union that is relevant and necessary to its role as the exclusive bargaining representative for the bargaining unit specified above.

(c) Failing to deal with the designated representative of the Union on matters pertaining to wages, hours, and terms and conditions of employment of the employees in the bargaining unit specified above.

(d) Failing to bargain with the Union over overtime by failing to provide relevant information pertaining to the issue of equitable overtime and by failing to follow through on the equitable overtime grievance settlement with the Union.

⁴ We have modified the judge's recommended Order to conform more closely to his findings and conclusions. We have also modified the recommended Order in accordance with *Ferguson Electric Co.*, 335 NLRB 142 (2001), and we have substituted a new notice. In addition, we agree with the General Counsel that the judge erred in recommending that the backpay due employees as a result of the Respondent's illegal failure to bargain should be computed on a quarterly basis according to the standard in *F.W. Woolworth Co.*, 90 NLRB 289 (1950), rather than the standard in *Ogle Protection Service*, 183 NLRB 682 (1970), *enfd.* 444 F.2d 502 (6th Cir. 1971). Thus, we have modified the recommended Order to clarify that backpay should be calculated according to the standard set forth in *Ogle*.

(e) In any like or related manner, interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative actions necessary to effectuate the policies of the Act.

(a) Bargain with the Union by timely providing the Union with the following requested information that is relevant and necessary to its role as the exclusive bargaining representative for the bargaining unit specified above:

The E.T.C. Everything Clock Ring Report that was requested on about June 15, 2001.

The E.T.C. Everything Clock Ring Report for the time steward James Latham spent at Jordan Station, including the clock ring report of Clock EBR#2.

The E.T.C. Clock Ring Report for the third quarter of 2001.

The E.T.C. Clock Ring Report for part-time flexible carriers at the Downtown Station for the two-week period ending July 21, 2001.

Witness statement of Felix Ovalle concerning an allegation of sexual harassment and harassment by James Latham and Ben Honea.

The six-month work analysis showing hours worked by casual employees and hours worked by part-time flexible employees that totaled less than 8-hour days and 40-hour weeks from January 2 through June 2, 2001.

The E.T.C. Everything Clock Ring Report for the Downtown Station from May 26 through June 1, 2001, and from June 2 through June 8, 2001.

The E.T.C. Everything Clock Ring Report for all city-wide part-time flexible employees for August 11, 2001.

Information concerning the hours worked by casual employees on August 11, 2001.

The tally of overtime used in the North Amarillo Stations on September 17, 2001, and a list of the routes associated with this overtime.

E.T.C. Everything Clock Ring Report for the Carrier Class, Downtown Station from September 8 through September 14, 2001.

E.T.C. Everything Clock Ring Report for the Carrier Class dated September 17, 2001.

E.T.C. Everything Clock Ring Report for Carrier Class, Downtown Station, for the period of September 15 through September 21, 2001.

E.T.C. Everything Clock Ring Report for the Downtown Carriers for the period of October 6 through October 12, 2001.

A list of harassment and discrimination EEO's and MSPB's for injured employees from October 9, 1999 to the present.

E.T.C. Everything Clock Ring Reports for Downtown Carriers from October 13 through October 19, 2001.

Work schedules for Downtown Carriers from October 7 through October 20, 2001.

E.T.C. Everything Clock Ring Reports for Downtown Carriers for October 20, 2001.

E.T.C. Everything Clock Ring Reports for Downtown Carriers from October 20 through October 26, 2001.

Work schedules for the Downtown Carriers from October 20 through October 26, 2001.

OSHA Guidelines on personal protection equipment.

Copies of the 5 p.m. window policy announced by Hayli Young at the General Mail Facility in October 2001.

E.T.C. Everything Clock Ring Report for Downtown Station Carriers from November 10 through November 16, 2001.

Forms 3999, 1938, 1840A, 1840B, from the last legal route check for all Downtown routes from January 1998 to the present.

Forms 1571, (Undeliverable Mail), 3996 (Auxiliary Assistance), and the work load analysis for all DOIS figures for the Downtown Carrier Unit from October 21, 2001 through January 2002.

Flash reports for the Downtown Station and North Amarillo Carrier Unit from October 2001 through January 2002.

The Form 4584, Driving Observation Form, completed by James Latham on David Miller.

(b) Deal with the Union's designated bargaining representative on matters pertaining to wages, hours, and terms and conditions of employment of the employees in the bargaining unit specified above.

(c) Bargain with the Union over overtime by providing relevant information pertaining to the issue of equitable overtime and by following through on the equitable overtime grievance settlement with the Union.

(d) Make the affected employees whole by paying them equitable overtime for the second quarter of 2001. Backpay shall be computed in the manner prescribed in *Ogle Protection Service*, 183 NLRB 682 (1970), enf'd. 444 F.2d 502 (6th Cir. 1971), with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at Amarillo, Texas, copies of the attached notice marked "Appendix."⁵ Copies of the notice, on forms provided by the Regional Director for Region 16, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 2001.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a re-

sponsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist any union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail to bargain with the National Association of Letter Carriers, Branch 1037, AFL-CIO (the Union), by failing to provide it with requested information that is relevant and necessary to its role as the exclusive bargaining representative for the following bargaining unit:

Included: All full-time and regular part-time city letter carriers.

Excluded: All other employees, including managerial personnel, professional employees, employees engaged in personnel work in other than a purely non-confidential clerical capacity, postal inspection employees, casual employees, rural letter carriers, mail handlers, maintenance employees, special delivery messengers, motor vehicle employees, postal clerks, security guards, and supervisors as defined in the Act.

WE WILL NOT fail to timely provide requested information to the Union that is relevant and necessary to its role as the exclusive bargaining representative for the bargaining unit specified above.

WE WILL NOT fail to deal with the designated representative of the Union on matters pertaining to wages, hours, and terms and conditions of employment of the employees in the bargaining unit specified above.

WE WILL NOT fail to bargain with the Union over overtime by failing to provide relevant information pertaining to the issue of equitable overtime and by failing to follow

⁵ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

through on the equitable overtime grievance settlement with the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL bargain with the Union by timely providing the Union with the following requested information that is necessary and relevant to its role as the exclusive bargaining representative for the bargaining unit specified above:

The E.T.C. Everything Clock Ring Report that was requested on about June 15, 2001.

The E.T.C. Everything Clock Ring Report for the time steward James Latham spent at Jordan Station, including the clock ring report of Clock EBR#2.

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Flash reports for the Downtown Station and North Amarillo Carrier Unit from October 2001 through January 2002.

The Form 4584, Driving Observation Form, completed by James Latham on David Miller.

WE WILL deal with the designated representative of the Union on matters pertaining to wages, hours, and terms and conditions of employment of the employees in the bargaining unit specified above.

WE WILL bargain with the Union over overtime by providing relevant information pertaining to the issue of equitable overtime and by following through on the equitable overtime grievance settlement with the Union.

WE WILL make affected employees whole by paying them equitable overtime for the second quarter of 2001, with interest.

UNITED STATES POSTAL SERVICE

Linda M. Reeder, Esq., for the General Counsel.
Earnest Burford, Esq. and John A. Chevrier, Agency Representative, for the Respondent.

DECISION

STATEMENT OF THE CASE

LAWRENCE W. CULLEN, Administrative Law Judge. This case was heard before me on May 15, 2002, in Amarillo, Texas. This case involves the alleged failure of the United States Postal Service (USPS or the Respondent) to bargain with the National Association of Letter Carriers (the Union or the Charging Party) by repeatedly failing to provide and/or to timely provide requested relevant information to the Union, by failing to bargain over overtime and by failing to pay second quarter equitable overtime in accordance with a grievance settlement in violation of Section 8(a)(5) and (1) of the National Labor Relations Act (the Act).

I. JURISDICTION

The Business of Respondent

The complaint alleges, Respondent admits, and I find that at all times material, Respondent provides postal services for the United States and operates various facilities throughout the United States in the performance of that function, including its facility located in downtown Amarillo, Texas, the facility involved in this case and the Board has jurisdiction over Respondent by virtue of Section 1209 of the Postal Reform Act.

II. THE LABOR ORGANIZATION

The complaint alleges, Respondent admits, and I find that at all times material, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

III. THE APPROPRIATE UNIT

The complaint alleges, Respondent admits, and I find that at all times material, the following employees of Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

INCLUDED: All full-time and regular part-time city letter carriers.

EXCLUDED: All other employees, including managerial personnel, professional employees, employees engaged in personnel work in other than a purely non-confidential clerical capacity, postal inspection employees, casual employees, rural letter carriers, mail handlers, maintenance employees, special delivery messengers, motor vehicles employees, postal clerks, security guards and supervisors as defined in the Act.

It is also alleged, admitted by Respondent, and I find that since about 1971 and at all times material, the International Union has been the designated exclusive bargaining representative; of the unit, and since then has been recognized as the representative by Respondent. This recognition has been embodied in successive collective-bargaining agreements. The bargaining agreement in effect at the time of the instant underlying unfair labor practice charges had a term effective from November 21, 1998, through November 20, 2001. At all times since 1971, the International Union, by virtue of Section 9(a) of the Act has been the exclusive representative of the unit. At all material times, the Local Union has been an agent for the International Union for various purposes including administering the collective-bargaining agreement with respect to employees in the unit who are employed by Respondent in Amarillo, Texas.

Prior to the hearing, the General Counsel served a subpoena duces tecum on Respondent compelling it to provide documents at the commencement of the trial. Respondent filed a Petition To Revoke Subpoena. I denied the Respondent's Petition To Revoke Subpoena and ordered Respondent to produce the documents whereupon Respondent refused to comply with the subpoena and my order and produced no documents at the hearing. I announced that I would strike the Respondent's defense for its refusal to comply with the subpoena duces tecum but I permitted Respondent to present evidence on the record in case the Board should disagree with my ruling striking the Respondent's defense. There is ample Board and court precedent for the consequences of refusing to comply with subpoenas duces tecum. *Bannon Mills, Inc.*, 146 NLRB 611, 613 fn. 4, 633-634 (1964); *Ingalls Shipbuilding*, 242 NLRB 417, 421 fn. 7 (1979); *American Art Industries*, 166 NLRB 943, 951-933 (1967), affd. 415 F.2d 1223, 1229-1230 (5th Cir. 1969), cert. denied 297 U.S. 990 (1970); *Hedison Mfg. Co. v. NLRB*, 643 F.2d 32 (1st Cir. 1981); *Control Services*, 303 NLRB 481, 483 (1991); *Louisiana Cement Co.*, 241 NLRB 536, 537 fn. 2 (1979); and *Equipment Trucking Co.*, 336 NLRB 277 (2001), with respect to an employer's facilitation of employees' failure to comply with a subpoena.

The General Counsel presented a prima facie case through the un rebutted testimony of Union Steward James Latham which I credit in its entirety and the submission of written union requests for information which were either totally or partially ignored by the Respondent and which were not answered by Respondent in full and in a timely manner concerning the issue of overtime equitability and the Union's grievance settlement concerning this issue. In March 2001, overtime equitability for the first quarter of 2001 became an issue between the

Union and Respondent. Article 8.5 of the parties National Agreement reads in part:

When during the quarter the need for overtime arises, employees with the necessary skills having listed their names will be selected from the 'Overtime Desired' list.

During the quarter every effort will be made to distribute equitably the opportunities for overtime among those (employees) on the 'Overtime Desired' list.

In order to insure equitable opportunities for overtime, overtime hours worked and opportunities offered will be posted and updated quarterly.

In March 2001, the Union and Respondent reached a grievance settlement to carry over the first quarter equitability into the second quarter and to make up any payments owed during the second quarter. Since equitability of overtime is determined by a review of hours worked and opportunities available for overtime, it was necessary for Latham and a supervisor to meet and review overtime tracking forms, ETC Everything Clock Ring reports and T & A (time and attendance) reports. Respondent failed to pay the first quarter equitable overtime as agreed to under the grievance settlement. Consequently the Union filed two additional grievances and made numerous requests for clock rings to determine whether overtime was distributed equitably. Respondent also failed to provide and/or timely provide ETC Everything Clock Ring reports requested by the Union. ETC Everything Clock Ring reports show the clock functions of each carrier and any alterations for the day. They include information such as when a carrier begins his tour, begins delivery, seeks auxiliary assistance to complete the route in 8 hours, returns from the street, and ends his tour.

Respondent failed to provide clock rings requested on June 15, 2001, which were requested by Latham because he believed another letter carrier was working "off route" and was altering the case of another employee.

Respondent failed to provide clock rings requested by Latham for the time he worked at Jordan Station. Latham normally works at Respondent's General Mail Facility, Downtown Station but was assigned to work at the Jordan Station for 2 weeks during June and July 2001. Latham believed his assignment to the Jordan Station violated article 17 of the contract which grants superseniority to union stewards. He initially requested the clock rings on July 9 and reiterated his request on July 16, 2001. He did not receive the clock rings until September 27, 2001, more than 2 months after his request. The clock rings are computer generated and may be retrieved in a matter of seconds.

Respondent failed to provide requested ETC Clock Rings for the third quarter of 2001. Latham requested the third quarter ETC clock rings on July 16, 20, and 24, 2001, to review whether overtime was equitable. In September 2001, Postmaster Sanderson presented Latham with a bill for \$1000 and demanded that Latham pay it before he would receive the requested clock rings. Latham refused to pay and requested that he be permitted to review the clock rings citing article 31 of the National Agreement which provides that:

The Employer make available for inspection by the Union all relevant information necessary for collective bargaining or the

enforcement, administration or interpretation of this Agreement, including information necessary to determine whether to file or continue processing of a grievance under this Agreement. Upon request of the Union, the Employer may require the Union to reimburse the USPS for any costs reasonably incurred in obtaining the information.

Prior to this Latham had requested and received a quarter of clock rings without being required to pay for them. Latham was not afforded the opportunity to review the requested clock rings.

Respondent failed to timely provide ETC Everything Clock rings for part-time flexible carriers in the Downtown Station for the last 2 weeks ending July 21, 2001. Respondent hires new employees PTFs (part-time flexible employees) who serve a probationary period and after having worked a certain number of hours for 6 months, the senior PTF is afforded full-time regular status. Latham requested Respondent furnish him the clock rings for the PTFs for the last 2 weeks ending July 21, 2001, as he believed Respondent was working PTFs from another section in the Downtown section which can only be done if there is no work available in the PTFs' assigned section. He did not receive the clock rings until September 26, 2001, more than 2 months after his request.

Respondent failed to timely provide ETC Everything Clock rings for May 26 through June 1 and June 2 through 8 and for the previous weeks which were requested by Latham on June 12, 2001. Latham had made this request to determine overtime eligibility. He received some clock rings on or after May 30, 2001, but the information was incomplete and provided only the clock rings for a single day May 29. On or after July 8, 2001, Latham received a clock ring report for only employee Alvarado. It was not until on or after August 31, 2001, that Latham received the rest of the requested clock rings, more than 2 months after the request.

The Union requested the October 20, 2001, clock ring report on October 22, 2001, to determine whether overtime was distributed equitably. Respondent had not provided this information as of the date of the hearing in this case. Similarly on October 12, 2001, Latham requested the clock rings for the week of October 6 through 12, 2001, to determine whether overtime was being distributed equitably and Respondent failed to provide them. Similarly on November 15, 2001, Latham requested the clock rings for November 10 through 16, 2001, to determine whether overtime was distributed equitably and Respondent failed to provide this information.

On August 22, 2001, Latham requested clock rings for August 11, 2001, because Respondent was "working PTFs and casuals out of North Amarillo into the Downtown Station." PTFs are to work 8 hours a day and casuals are not to work if the PTFs are not receiving 8 hours of work under article 7 of the collective-bargaining agreement. The clock rings would show which employees worked in the Downtown Station and the number of hours worked by casuals to determine whether a casual was working while a PTF was not receiving 8 hours of work. The Union has not received the clock rings or the hours worked by casuals.

On October 19, 2001, Latham requested the clock ring report for the Downtown Carriers at the General Mail facility from October 13 through 19, 2001, and the work schedules of the North Amarillo carriers and Downtown carriers from October 7 through 20, 2001, to determine if overtime was distributed equitably. The work schedules would show which casuals and PTFs were scheduled and those "forced to sit by the phone at home." Respondent failed to provide this information. On October 24, 2001, the Union requested the ETC clock ring report for the Downtown carriers' and the Downtown carriers' work schedule for the period of October 20 through 26, 2001, for both of these items to determine if overtime was distributed equitably. Neither the ETC clock rings or the work schedule were furnished to the Union.

On September 18, Latham requested the tally of overtime in the North Amarillo stations on September 17, 2001, and a list of routes associated with this overtime, the ETC everything clock rings for September 8 through 14 and 17. On or about September 21, Latham requested the ETC everything clock rings for the period September 15 through 21, 2001. Latham requested these items because Respondent was using PTFs from the North Amarillo station which would have precluded the use of the PTFs to reduce overtime at the Downtown station. Latham did not receive the tally of overtime or the list of routes associated with the overtime. Latham requested the clock rings to determine if there was overtime equitability. On or after November 7, 2001, Respondent provided only Latham's clock rings and otherwise failed to provide any other clock rings for other employees during the requested time period.

A form 4584 is a driving observation form used by management to record any driving infractions by a carrier while he is driving a motor vehicle in the performance of his duties. Latham filled out this form after Union President Fred Rangel told him that David Miller, a part-time supervisor and part-time carrier, drove up in a postal vehicle and committed violations of Respondent's policies. Latham performed a check of the vehicle and noted on the form that Miller had left the vehicle windows down, failed to put on the handbrake and had not backed into the parking space as required by Respondent's policies. Latham turned in the form to Respondent's management and shortly thereafter requested the form to see what corrective action had been taken as Miller, a supervisor, could discipline other employees for these infractions. Approximately 2 months later Latham asked Postmaster David Sanderson what had happened to the copy and was told it had been sent to the postal inspectors. The form was not provided to the Union.

On June 7 and 14, 2001, Latham requested copies of driving observations performed by Supervisor Felix Ovalle on June 7, 2001, because he and Rangel had observed Ovalle filling out driving observation forms at his desk. The forms are required to be filled out "on the street" by a supervisor and to contain notations for infractions. These forms are used to support disciplinary actions taken and/or to commend an employee for good performance. Latham did not receive this form until on or after September 26, 2001, more than 2 months after the request.

Latham was accused of sexual harassment and harassment by employee Jay Hutson. Latham filed a grievance concerning

a violation of Respondent's zero tolerance policy related to this incident. Respondent conducted an investigation of Hutson's allegations in which Ovalle served as an investigative interviewer. Jordan Station Manager Karen Terrasas served as the main investigative interviewer and told Latham that Ovalle had prepared a "nice little one-liner" statement. Latham requested a copy of Ovalle's statement on July 24 and August 4, 2001, to learn of Ovalle's findings concerning the zero tolerance policy. He was never provided with the statement.

There was an ongoing anthrax scare and Respondent announced plans to furnish the employees with respirators and gloves and was planning to sample the air quality. The Union requested OSHA guidelines on personal protection equipment on October 25, 2001, to determine if the respirators were sufficient and when the air quality would be checked. This information was never provided to the Union.

On October 25, 2001, the Union requested copies of the 5 p.m. window policy announced by Supervisor Hayli Young at the General Mail facility in October 2001. A window policy is Respondent's attempt to have all carriers off the street by 5 p.m. Latham requested this information to investigate a grievance filed concerning the announcement of the policy. Respondent by Young admitted she did not provide this information.

Respondent failed to provide other information impacting bargaining unit employees' terms and conditions of employment. It failed to provide a 6-month work analysis on part-time flexible employees showing casual hours, less than 8-hour days and 40-hour weeks from January 2 through June 2, 2001. On June 5, 2001, Latham requested this information. The Union wanted this information to determine if part-time flexible employees should be converted to full time status. Article 7 of the National Agreement provides that casual employees may not be employed in lieu of full-time or part-time employees.

Respondent failed to timely provide information concerning the Greentree subdivision which was located within Amarillo city limits and which Latham contends should have been assigned to a city carrier. Latham filed a grievance over the dispute on January 6, 2001, which was the same day as his request. Latham did not receive this information until September 26, 2001, more than 8 months after the request.

Respondent failed to provide a list of harassment and discrimination EEOs (Equal Employment Opportunity) and MSPBs (Merit System Protection Board) for injured employees from October 9, 1999, to the present. This request was made by Latham on October 2 and 18, 2001. The purpose of the request was to show the history of grievances filed since Postmaster Sanderson came to Amarillo.

Respondent failed to allow the Union to review relevant information concerning terms and conditions of employment. On October 10, 2001, the Union requested to review forms 3999, 1838, 1840A, and 1840B from the last legal route check for all downtown routes from January 1998 to the present and forms 1571 (undeliverable mail), 3996 (auxiliary assistance), and workload analysis for all DOIS figures for the Downtown carrier unit from October 21, 2001, through January 2002. DOIS is software used for workload analysis. At the time of the request a special team of BPI had been sent to Amarillo to con-

duct an investigation and was observing carriers in the office and on the street. The Union wanted the requested information to compare it with the route checks currently being performed.

Respondent failed to provide the Union the opportunity to review the Flash Report (showing the curtailment of mail) for the downtown station and North Amarillo carrier unit from October 2001 through January 2002. The requested information would show if Respondent was working employees out of another section when there was work available at their own station.

Analysis

Under the Act an employer is obligated upon request to furnish the Union information which is relevant or would tend to lead to relevant information for the Union to carry out its statutory obligations to represent employees for whom it is the collective bargaining representative, *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967); *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149 (1956). The Board uses a "liberal discovery standard" to determine whether the requested information would be useful to the Union in carrying out its statutory obligations. *Postal Service*, 307 NLRB 429, 432 (1992). It is also well settled that an employer is obligated to furnish information that can be used to process and investigate grievances. Information concerning bargaining unit employees is presumptively relevant and must be furnished upon request. *Madison Center*, 330 NLRB No. 72 (2000) (not reported in Board volumes); *Evergreen New Hope Health & Rehabilitation Center*, 337 NLRB No. 71, slip op. at 2 (2002) (not reported in Board volumes). Failure to timely provide relevant information is violative of Section 8(a)(5) and (1) of the Act as is the failure to produce relevant information.

In the instant case, Respondent has a contractual obligation to provide relevant information in a timely manner in addition to its statutory obligation.

Article 31.1, section 3 of the parties collective-bargaining agreement states:

The Employer will make available for inspection all relevant information necessary for collective bargaining, or the enforcement, administration or interpretation of this Agreement including information necessary to determine whether to file or to continue the processing of a grievance under this Agreement. Upon the request of the Union, the Employer will furnish such information, provided, however, that the Employer may require the Union to reimburse the USPS for any costs reasonably incurred in obtaining the information.

....

Nothing herein shall waive any rights the Union may have to obtain information under the National Labor Relations Act, as amended.

The NALC-USPS Joint Contract manual, article 31, lists the type of documents to be provided to the Union, such as disciplinary records, route inspection records, reports and studies, and postal inspection service investigative memorandum (IMs).

I find that the evidence presented by the General Counsel at the hearing clearly establishes a prima facie case of the violations of Section 8(a)(5) and (1) of the Act were committed by Respondent by its repeated failure and refusal to timely furnish the information sought by the Union which was presumptively relevant to the Union's statutory obligations in representing the unit employees; by its failure to bargain over overtime by failing to provide relevant information pertaining to this issue; and by its failure to follow through on its grievance settlement to pay equitable overtime for the second quarter of 2001 and by its failure to deal with James Latham as union representative as admitted by Supervisor Hayli Young. As I have struck the defense of the Respondent, I conclude that Respondent has failed to rebut the prima facie case.

CONCLUSIONS OF LAW

1. The Respondent is an employer subject to the jurisdiction of the Board by virtue of Section 1209 of the Postal Reform Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent violated Section 8(a)(5) and (1) of the Act by:

- (a) Its failure to provide requested relevant information.
- (b) Its failure to timely provide requested relevant information.
- (c) Its failure to deal with James Latham as union representative.
- (d) Its failure to bargain over overtime by failing to provide relevant information pertaining to the overtime issue and by failing to follow through on its grievance settlement.

THE REMEDY

Having found that the Respondent has engaged in violations of the Act, it will be recommended that the Respondent cease and desist therefrom and take certain affirmative action designed to effectuate the purposes of the Act and post the appropriate notice.

It is recommended that Respondent cease and desist from failing to deal with the designated union representative, cease and desist from failing to provide relevant requested information and cease and desist from failing to timely provide relevant requested information.

It is recommended that Respondent bargain with the Union over the issues of overtime, make the affected employees whole by paying the equitable overtime to the employees for the second quarter 2001, provide all outstanding information, deal with the Union's representative.

It is recommended that backpay be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest computed at the "short term Federal rate" for the underpayment of taxes as set out in the 1986 amendment to 26 U.S.C. § 6621 as provided in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

[Recommended Order omitted from publication.]